

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANTS AND CONSOLIDATED JOINT APPENDIX

In The United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 15,677

285

JOHN F. ENGLISH, ET AL.,

Appellants,

v.

JOHN CUNNINGHAM, ET AL.,

United States Court of Appeals

For the

District of Columbia Circuit

Appellees.

FILED

MAY 20 1960

NO. 15,682

JOHN F. ENGLISH, ET AL.,

Joseph W. Stewart

CLERK

Appellants,

v.

JOHN CUNNINGHAM, ET AL.,

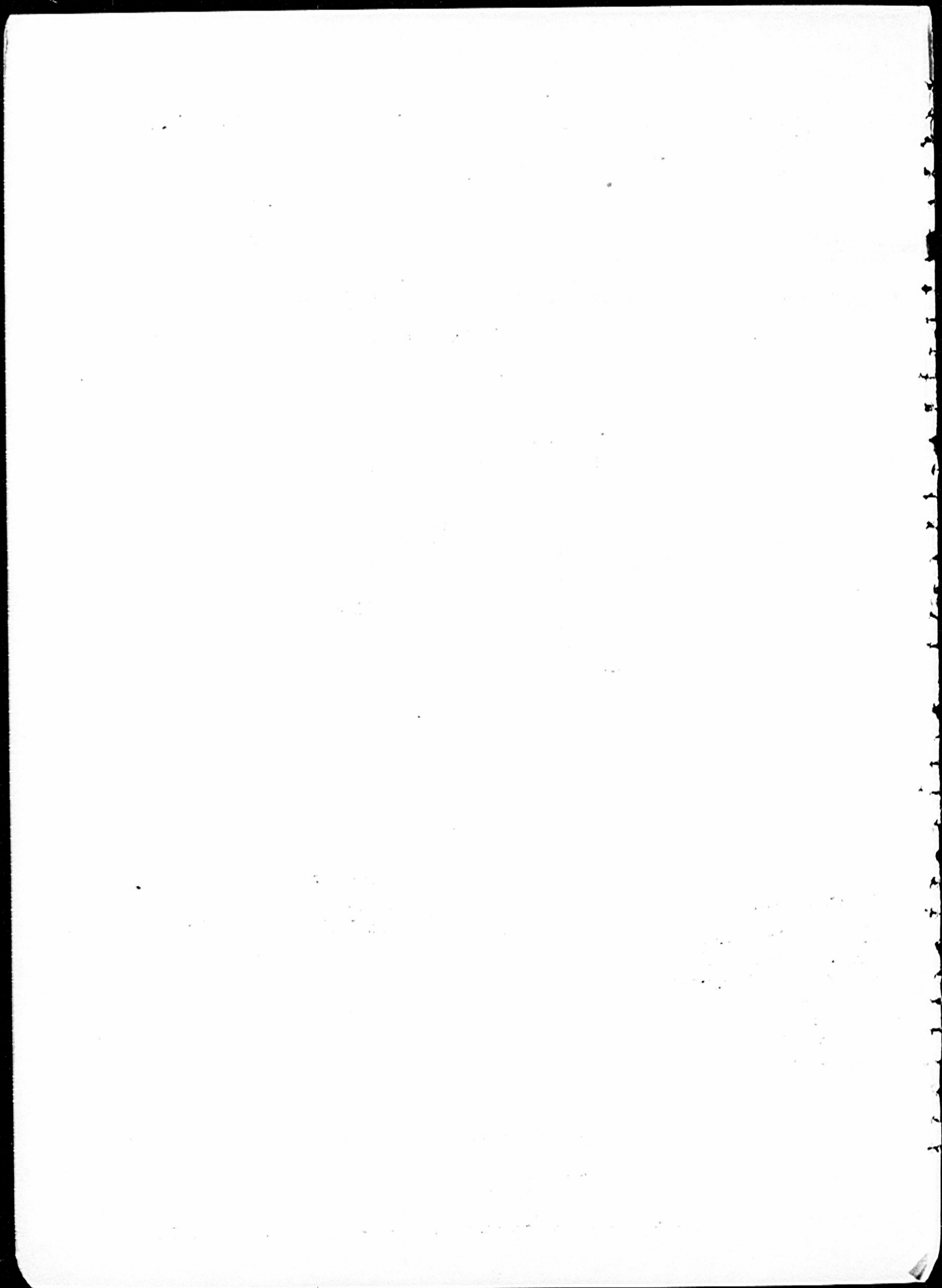
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

OF COUNSEL:

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Milwaukee, Wisconsin

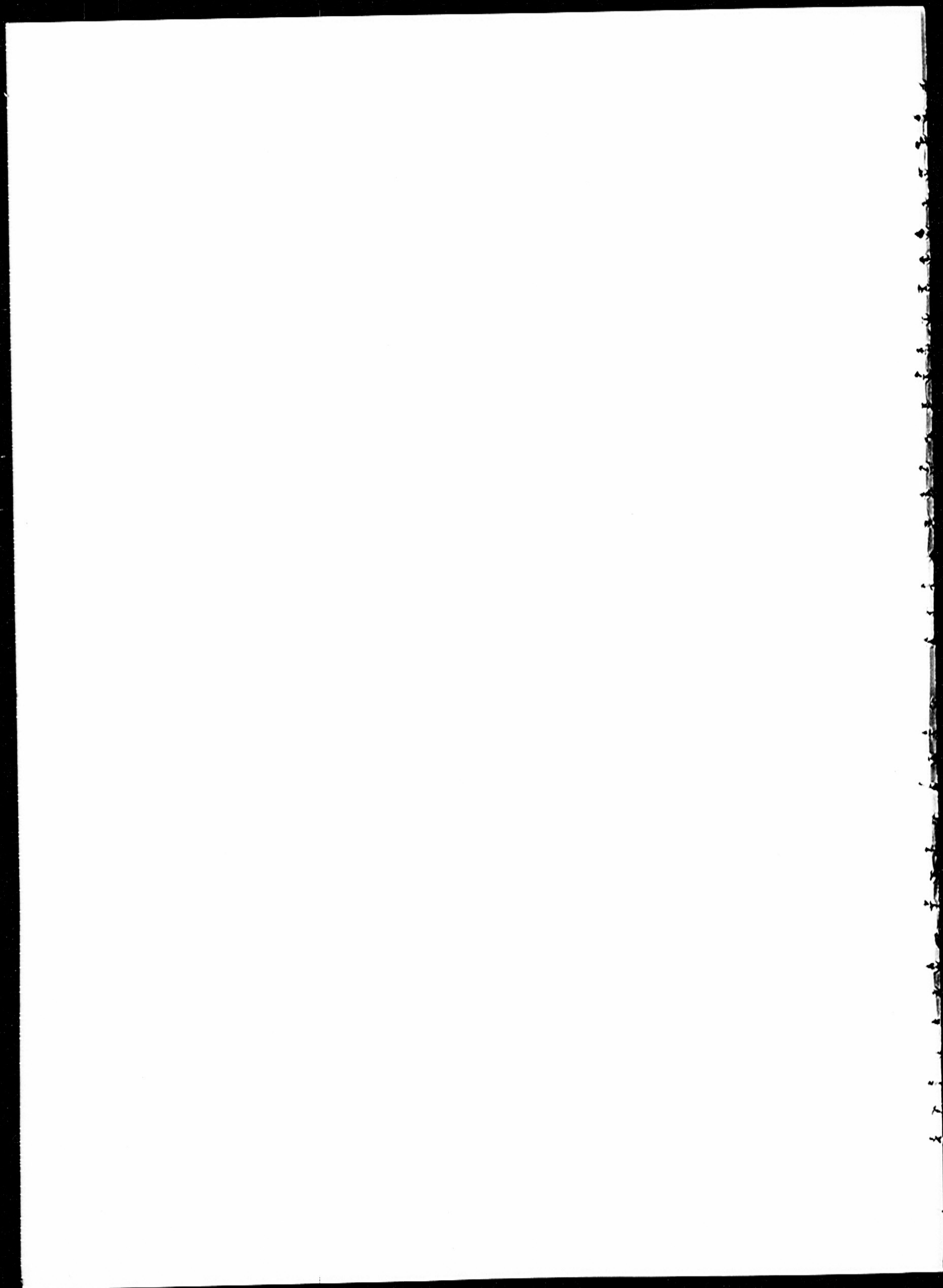
EDWARD BENNETT WILLIAMS
HAROLD UNGAR
RAYMOND W. BERGAN
1000 Hill Building
Washington 6, D. C.
Counsel for Appellants.



QUESTIONS PRESENTED

Whether, under the consent decree of January 31, 1958, as construed by this Court in English v. Cunningham, 106 U. S. App. D. C. _____, 269 F. 2d 517 (1959), the District Court may confer upon the chairman of the Board of Monitors sole authority, to the exclusion of the other two Monitors, to:

- (1) direct the activities of the Monitors' retained law firm with respect to any matters referred to said firm for litigation; and
- (2) hire such members of the staff of the Board of Monitors as he may choose and at such salaries as he may choose.



(i)

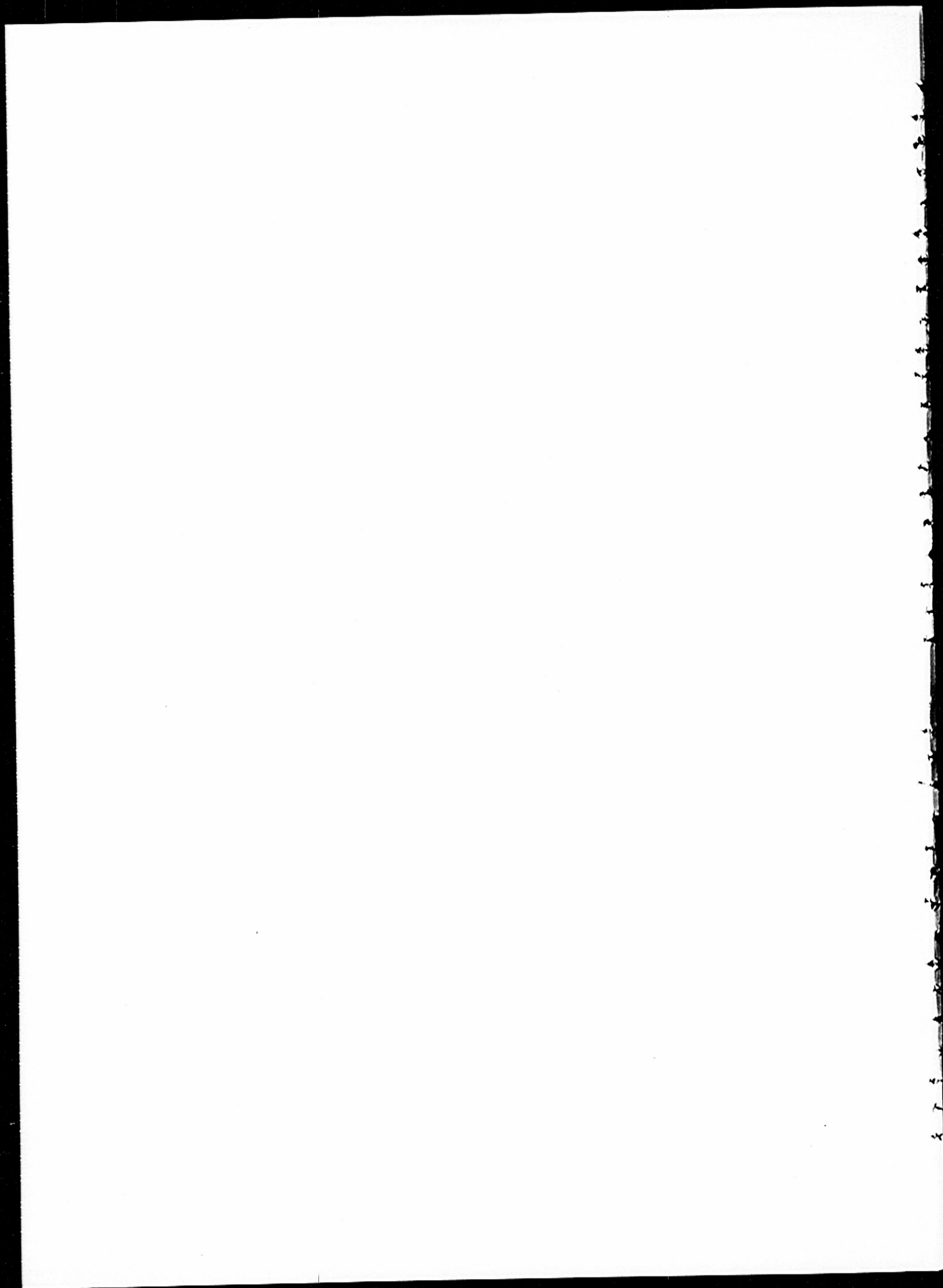
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TABLE OF AUTHORITIES

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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JOHN CUNNINGHAM, et al. ,
Appellees.

NO. 15,682

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v.

JOHN CUNNINGHAM, et al. ,
Appellees.

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

The jurisdiction of the District Court was a retained jurisdiction under the consent decree of January 31, 1958, as construed by this Court in English v. Cunningham, 106 U.S. App. D. C. _____, 269 F. 2d 517 (1959). The jurisdiction of this Court to review the orders of the lower court herein appealed from is founded upon the Act of June 25, 1948, C. 646, 62 Stat. 929, as amended, 28 U.S.C. §1292(a)(1).

STATEMENT OF THE CASE

The orders appealed from are part of the litigation which was before this Court in English v. Cunningham, 106 U.S. App. D. C. _____, 269 F. 2d 517 (1959), hereinafter referred to as the parent case.

The instant appeal is from two orders of the District Court of March 14, 1960:

1. The order affirming certain informal instructions given by the court to the chairman of the Board of Monitors on January 19, 1960. J. A. 20.
2. The order denying appellant's motion for rescission of said informal instructions. J. A. 19.

On January 26, 1960, Mr. Daniel B. Maher, then one of the three members of the Board of Monitors, filed with the District Court a verified petition for instructions (J. A. 4), in which he stated that at a meeting of the Board with the court below on January 19, 1960, the chairman of the Board had requested and obtained from the court the following authorizations:

- (1) That he, the chairman, exercise sole control and direction of the activities of the Board's retained law firm, without any requirement of consultation with the other two Monitors except as to new substantive matters to be referred to the law firm.
- (2) That the chairman, without consultation with the other two Monitors, may hire three additional lawyers for the Board staff.

On February 3, 1960, the appellants moved below for (1) rescission of the authorizations referred to in Mr. Maher's petition, and (2) direction by the court to the Board of Monitors to use procedures affording an opportunity for all three members to participate. J. A. 6. The appellants reported to the court,

in those motion papers (J. A. 7), that, on January 21, 1960, just two days after the authorizations sought to be rescinded, the chairman of the Board of Monitors had sent the following letter to Mr. Walter Sheridan:

"January 21, 1960

Mr. Walter Sheridan
Senate Select Committee on
Improper Activities in the Labor
or Management Field
Senate Office Building
Washington, D. C.

Dear Walt:

This is to advise you that you are employed by the Board of Monitors, beginning February 1, 1960, at a salary of \$12,000 per annum. Judge Letts advised me in the presence of Messrs. Maher and Smith that as I must head up the litigation and the staff, I should be free to select the personnel I need on my staff.

Will you please advise me whether or not you will ready to report to the Board of Monitors on February 1, 1960.

Very truly yours,

Martin F. O'Donoghue
Chairman, Board of Monitors

cc: Daniel B. Maher, Esquire
Lawrence T. Smith, Esquire"

On February 23, 1960, the law firm of the Board of Monitors filed a reply to the appellants' motion, purportedly on behalf of the Board. J. A. 12. In view of the chairman's assumption of sole authority to direct the law firm's activities, however, it is to be presumed that the reply thus filed represented the views of the chairman rather than those of the Board. Monitor Maher then filed a separate statement on the appellants' motion. J. A. 11.

The appellants' motion and Monitor Maher's petition for instructions came on for a hearing on March 7, 1960, on all of the aforementioned papers. On March 14, 1960, the court below entered (1) an order affirming the instructions given on January 19, 1960 (J. A. 20); and (2) an order denying the motion for their rescission. J. A. 19.

The appellants, on March 22, 1960, moved in the District Court for a stay of the orders of March 14, 1960. The district judge to whom this litigation is permanently assigned departed on April 6, 1960, for a Caribbean cruise without having heard or ruled on the motion for a stay. In view of the exigencies of the case, appellants could not wait for the judge's return. They therefore requested the consent of counsel for the Board of Monitors to a withdrawal of their March 22 stay motion, preparatory to an appeal to this Court. Such consent was refused. Because of the absence of the judge, leave to withdraw the motion could not be sought. Accordingly, on April 12, 1960, appellants filed a notice of appeal from each of the orders of March 14, 1960 (J. A. 21) and, on April 15, 1960, they moved for a stay in this Court, which motion was heard by the Court on May 9, 1960, and is presently awaiting decision. The separate appeals from the two orders of March 14, 1960, were consolidated by this Court's order of May 5, 1960.

STATEMENT OF POINTS

1. The District Court's order of March 14, 1960, affirming its informal instructions of January 19, 1960, concerning the authority of the chairman of the Board of Monitors to direct the activities of the law firm of the Board of Monitors and to select the Board's staff is erroneous in that it violated Paragraph 2 of the consent decree and the mandate of this Court.

2. The District Court's order of March 14, 1960, refusing to rescind the aforesaid informal instructions of January 19, 1960, is erroneous in that it violates Paragraph 2 of the consent decree and the mandate of this Court.

SUMMARY OF ARGUMENT

I

Paragraph 2 of the consent decree makes all Board of Monitor action controllable by majority vote. This Court, moreover, has held that Monitorial procedures must be such as to provide an opportunity for all three Monitors to participate. The law firm, this Court has also said, is to assist the whole Board in litigation which the whole Board considers necessary in the performance of the duties of the whole Board. The orders here appealed from, giving the chairman of the Board exclusive control of the activities of the law firm, violate Paragraph 2 of the decree and this Court's mandate. The fact that the other two Monitors are left with some voice in the determination of which matters should be assigned to the law firm does not save the orders from invalidity, for how the law firm is to proceed is often as important as whether it should proceed.

II

The grant of exclusive authority to the chairman to hire Board staff members is equally invalid, for it too violates Paragraph 2 of the consent decree and the mandate of this Court for procedures giving all three Monitors an opportunity to participate in Board action.

ARGUMENT

I Granting the Monitor Chairman Sole Control of the Activities of the Board's Law Firm Is a Plain Violation of the Consent Decree as Construed by this Court.

The basis of the lower court's authorization to the Board of Monitors to retain a law firm was the provision of Paragraph 12 of the consent decree of January 31, 1958,^{1/} that the International "shall make available to the Board

^{1/} For the consent decree, see Appendix A of this Court's opinion in the parent case, 269 F. 2d at 532.

of Monitors such clerical and technical help as is reasonably required and necessary." (Emphasis supplied.) Therefore, even assuming that this Paragraph covers retention of a law firm, ^{2/} the firm's help is to be extended not to the chairman of the Board of Monitors, but to the Board.

Paragraph 2 of the consent decree provides that "A majority vote of the Monitors shall be determinative of any action to be taken by the Monitors." If the two Monitors other than the chairman agree that the law firm should take or not take a particular position on behalf of the Board, their majority vote is determinative. The fact that the chairman may disagree is immaterial. Nothing prevents him from stating his own position separately if he so chooses, but he may not employ for that purpose the law firm retained by the Board and paid for by the International.

Under the orders of March 14, 1960, the chairman may not only utilize the services of the law firm in pressing his own separate position, but may actually preclude the majority of the Board from the use of the firm to press the Board's position. Such an anomolous situation is too patently ridiculous to have been intended by the parties in formulating the consent decree or by the court below in adopting it. Yet, it inevitably results from the orders here under attack. Thus, on March 22, 1960, the chairman sought an instruction from the District Court whether an Interim Report prepared by him, but not concurred in by either of the other two Monitors, should be filed as his individual report or the Board should be ordered to file it. If the chairman utilized the law firm in the preparation of the said Interim Report, the law firm obviously would not also espouse the contrary position apparently taken by the other two Monitors. Even if the law firm was not employed by the chairman in this instance, the law firm could still not be used by the majority of the Board in presenting their position, because the chairman controls the law firm under the orders of March 14, 1960.

^{2/} The question whether the Board of Monitors may retain a law firm at the International's expense is presently under submission in this Court in No. 15,339.

What was intended by the consent decree is clear from the provision that Board action be by majority vote. That this provision precludes such an anomalous situation as the orders here appealed from create was clear to this Court when it said in English v. Cunningham, 106 U. S. App. D. C. at _____, 269 F. 2d at 530:

"We point out also that the Monitors must use procedures which afford opportunity for all three Monitors to participate."

In its order of January 7, 1960, vacating with restrictions, its stay of the order authorizing retention of the law firm, this Court made it clear that control of the firm's activities must be lodged in the whole Board of Monitors. The law firm, this Court said, was "to assist them [the Board of Monitors] in litigation prudently and reasonably deemed by the Board to be required in the performance of the duties of the Board..." (Emphasis supplied.)

The reservation by the court below, in its grant of authority to the chairman, that the other members of the Board may participate in the decision whether to refer a new substantive matter to the law firm, does not satisfy the requirements of the consent decree. It is too plain to require demonstration that there may be many matters as to which the question whether the Board of Monitors should litigate is not more important than the question of how it should litigate. When several different procedures or lines of argument are available to achieve a litigative result which a majority of the Board has determined to seek, the choice of the procedure to be used or the line of argument to be advanced on behalf of the Board cannot be said to be a matter of no consequence to the Board. Because the approach to be taken to the problems of the International and its members is a matter of great consequence, the consent decree provides for nomination of one member of the Board by the plaintiffs, another by the defendants and the third by both; and it further provides, as this Court has construed it, that the Board should

operate in such a way as to allow for the expression of the views of all three Monitors, with decisions to be determined by majority vote.

The "Sun Valley" Interim Report, for example, which is the subject of the appeal in No. 15,704, is not a new substantive matter. Under the orders of March 14, 1960, the control of the activities of the law firm regarding that matter is to be exercised solely by the chairman. It was apparently he alone who authorized the law firm to take the position that the comprehensive report of the findings of the Board of Monitors, required by the District Court's order of December 7, 1959,^{3/} would not be filed, a position going to the very heart of the question whether the proceedings on the "Sun Valley" Interim Report are valid.

The basis upon which the court below first informally granted and then formally refused to rescind the authorization to the chairman to maintain sole control of the activities of the law firm, was (1) that the control of the law firm is a matter of administrative detail and (2) that administrative matters must, for the sake of efficiency, be entrusted to one man rather than to a board. Transcript of Hearing before District Court, March 7, 1960, p. 69. The first part of this basis -- that the decision of how to litigate, as distinguished from whether to litigate, is merely an administrative detail -- has, we submit, been refuted above.

So far as concerns the second part of the basis of the decision below, namely that there must be one-man control of administrative details, appellants do not suggest that every detail of administration is required to be formally passed upon by the full Board of Monitors. The format of a brief to be filed by the law firm, whether or not to use footnotes, the choice of particular phraseology, etc., are all matters which consideration of efficiency would dictate should be decided by one man. There has never been any problem as to such matters, for the Board has been content to let the chairman handle them.

^{3/} See No. 15,704, J.A. 27.

Nor is there any reason to anticipate any such problem in the future. The Board of Monitors has power, either by informal consensus or by formal resolution, to delegate to its chairman such matters of administration as it deems desirable; and, as will be shown in Point II, infra, it has done so in the past. But if the majority of the Board wishes to keep control of administrative matters in its own hands, it may, under this consent decree, do so, for the decree makes all actions of the Board, not only those which are important or those which involve policy, determinable by majority vote. Moreover, not even a majority of the Board may deprive a Monitor of the right he possesses under this court's mandate, to participate in the discussions which result in any Board action. For the court below to authorize the chairman alone to determine any Board action which the Board has not delegated to him amounts to tampering with the consent decree.

II. The Authorization To The Chairman Of The Board To Hire Three Additional Lawyers For The Board's Staff Is A Plain Violation Of The Consent Decree As Construed By This Court.

Pursuant to Paragraph 12 of the consent decree, the International has undertaken to pay the costs of a staff to assist the Board of Monitors. It has not questioned the Board's right to employ such a staff under that Paragraph. It has always taken the position, however, that, as the Paragraph provides, the staff is designed to help the Board of Monitors and is to be limited by the provision that the Monitors employ only such "help as is reasonably required and necessary."

The arguments advanced in Point I, supra, apply, for the most part, equally well to the question whether the District Court may validly confer upon the chairman of the Board of Monitors authority to hire additional lawyers for the Board's staff without the approval of a majority of the Board. The staff lawyers, no less than the law firm, are to serve the Board, not the chairman. The provision of Paragraph 2 of the decree that Board action be

determined by majority vote applies to hiring staff lawyers as well as to directing retained lawyers. So also does this Court's mandate to the Board to "use procedures which afford opportunity for all three Monitors to participate."

According to the court below, the hiring of additional staff lawyers, like the direction of the Board's retained law firm, is a matter of administrative detail which must be left to the chairman's sole control. That view of the court below is the position sought to be defended in the reply which the Monitors' law firm made to the motion below. They quote, in support of their position, the following extract from the minutes of the Board of Monitors for July 22, 1959:

"Member Maher expressed the view that the Chairman had capably administered the Staff in the past and should continue to do so. The Chairman agreed with Member Maher." J. A. 14.

They further say:

"It should be noted that irrespective of this authority the Chairman, as a matter of courtesy, has always submitted the hiring and selection of staff personnel to the entire Board." J. A. 14.

Their position, in other words, is that the hiring of new staff members is a matter of administration that the Board was content to leave to the chairman's sole control, but that the chairman nevertheless consulted his fellow-members of the Board.

Appellants submit that the Board's lawyers, by this line of argument, have talked themselves out of court. In the first place, they apparently concede by their argument that it takes a delegation by a Board majority, rather than a court direction, to place any exclusive authority in the chairman. Secondly, if this be so, they effectively demonstrate that there has been no such delegation. The quoted minute extract, as appears from its very language and as Monitor Maher asserts in his separate statement (J. A. 11), relates not to hiring staff

members, but only to administering the staff that has been hired. It means that the Board has seen fit to entrust to its chairman's discretion such matters as staff working hours, overtime pay, vacations, sick leave and general administrative supervision. The extract cannot be read to mean that the chairman has been given sole authority to decide whether to expand the staff and, if so, whom to hire and at what salary. The fact that, prior to the District Court's action here involved, the chairman never sought to hire a staff member without a Board vote demonstrates that he recognized that Board approval was required, not as the Monitor's law firm says, that he was being courteous to his colleagues.

To adopt the theory relied on by the court below and defended by the Monitors' law firm would convert the Monitorship from the cooperative organism envisioned by this Court, in which all three members participate, into an authoritarian institution controlled by one man. The Monitor nominated by the International and its officers and the Monitor nominated by the plaintiff members of the International, who profess to represent the interests of the entire membership, could very well be less disposed than the chairman of the Board to expend the funds of the International in rampaging investigations and legal proceedings going beyond the reasonable necessities of the case. They could also be less inclined than he to add to the staff a man whose background could suggest to them that he is not devoted to the interests of the labor movement which they both represent. Their interest in economy might also dictate to them that the Board should not at this stage of the case undertake to pay salaries substantially higher than it is now paying. All of these considerations would enter into a Board decision whether to expand the staff; if so, whether to hire Mr. Walter Sheridan of the "McClellan Committee"; and, if so, whether to pay him a \$12,000 salary. The decision, of course, would be determined by majority vote, as provided by the consent decree. The orders below short-circuit the processes contemplated by the consent decree by letting the chairman act on his own preferences without even consulting the other Monitors. Thus, in his letter hiring Mr. Sheridan only two days after he had obtained the District Court's authorization herein complained of, the chairman stated:

"... as I must head up the litigation and the staff, I should be free to select the personnel I need on my staff." (Emphasis supplied.)

Monitor Smith, since he has been on the Board, has employed a personal staff assistant. This has been by authorization of the unanimous Board. The defendants' designee on the Board never took advantage of this authorization to employ a personal staff assistant until May 16, 1960, when Monitor Bufalino employed one. The chairman has taken the position that, so long as each of the other Monitors may employ an assistant, the staff of the Board as such belongs only to him. He has stated in a deposition on file in the court below:

"Let me say this to you: Every Monitor can take his own Staff Assistant and hire whom he pleases.

"With regard to the staff the Chairman has, the Court has stated that the Chairman would have the right to select the individuals that are going to work with the Chairman.

* * *

"The Decree provides that we carry out our duties under the directions and instructions of the court, and the court could certainly tell us in the selection of employees for each Board member how it should be done, and the court did just that.

"If it is wrong, let the Court of Appeals reverse it."

Transcript of Deposition of Martin F. O'Donoghue,
April 6, 1960, pp. 137-138.

If the Monitorship is to serve the ameliorative purpose for which it was designed rather than as the chairman's personal punitive device; we think this Court must take up Mr. O'Donoghue's challenge and reverse the orders here complained of.

CONCLUSION

In the light of the foregoing, it is respectfully submitted, the District Court's two orders of March 14, 1960, (1) affirming and (2) refusing to rescind the grant of one-man control of the activities of the Board's law firm and the selection of the Board's staff, should be reversed.

EDWARD BENNETT WILLIAMS

HAROLD UNGAR

RAYMOND W. BERGAN

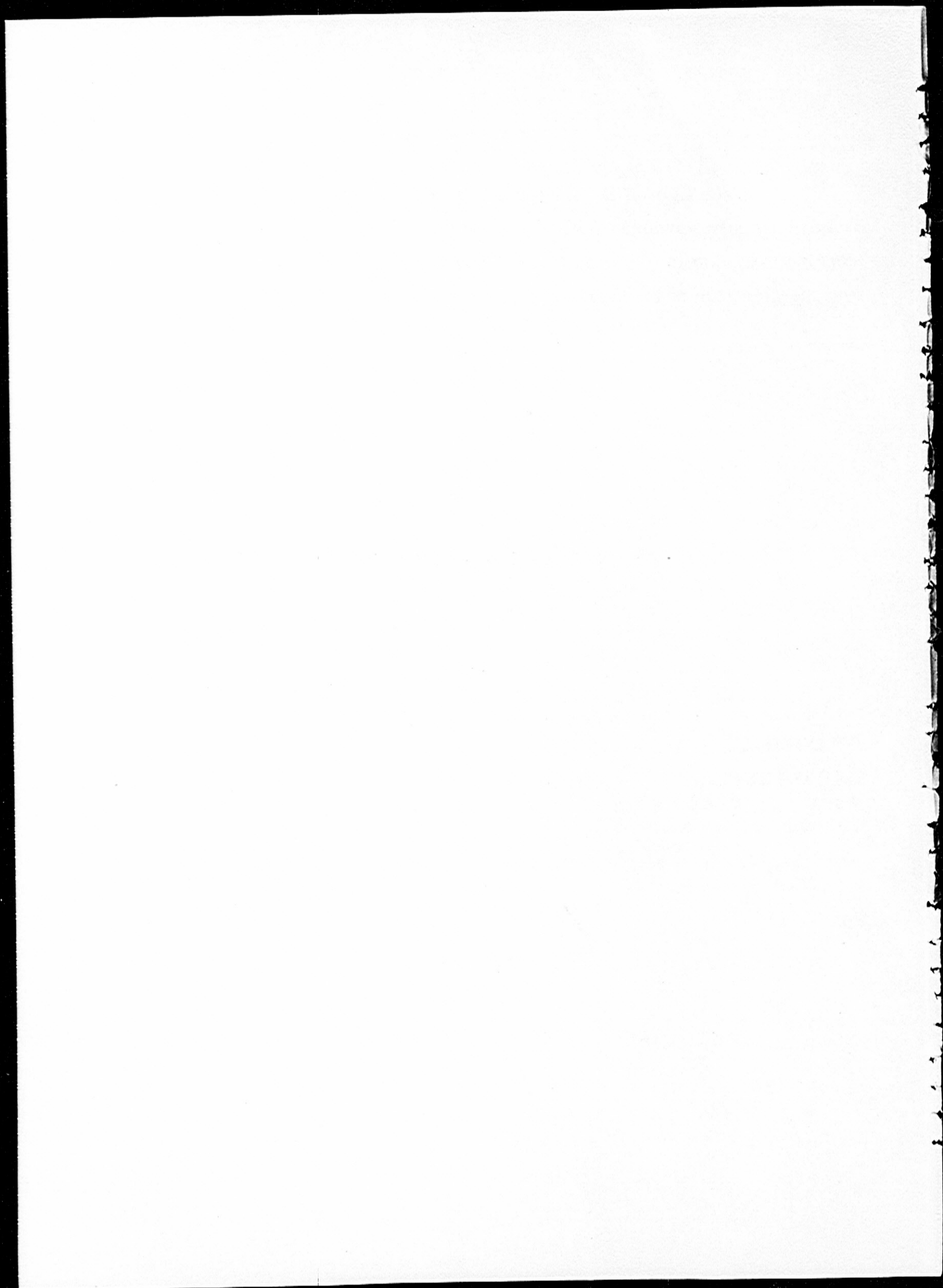
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Attorneys for the Appellants.

OF COUNSEL:

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Warner Theatre Building
Milwaukee, Wisconsin

JOINT APPENDIX



IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 15, 677

JOHN F. ENGLISH, ET AL. ,
Appellants,

v.

JOHN CUNNINGHAM, ET AL. ,
Appellees.

and

NO. 15, 682

JOHN F. ENGLISH, ET AL. ,
Appellants,

v.

JOHN CUNNINGHAM, ET AL. ,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

CONSOLIDATED JOINT APPENDIX

RELEVANT DOCKET ENTRIES1960

Jan. 26	Petition of Daniel B. Maher for Instructions; c/m 1-26-60	filed
* * * * *		
Feb. 3	Motion of defts. , except James L. Hoffa, for rescission of informal authorization granted to Chairman of Board of Monitors on 1-19-60, and for direction to the Board to use proper procedures; c/m 2-3-60; P. & A. ; M. C. 2-4-60	filed
* * * * *		
Feb. 23	Reply of Board of Monitors to defts. motion for rescission of informal authorization; c/m 2-23-60	filed
* * * * *		
Feb. 29	Separate statement of Monitor Maher to motion for rescission of informal authorization; c/m 2-29-60	filed
* * * * *		
Mar. 14	Order denying motion for rescission of informal authority; (N) Order affirming instructions of court on 2-19-60 (N)	Letts, J. Letts, J.
* * * * *		
Mar. 22	Motion of defts. for stay of court's instructions of Jan. 19, 1960 and of the orders of Mar. 14, 1960, affirming and refusing to rescind said instruc- tions; c/m 3-22-60; P. & A. ; M. C. 3-22-60	filed
* * * * *		
Mar. 30	Opposition of Board of Monitors to defts. motion to stay; c/m 3-30-60	filed
* * * * *		

Apr. 12	Notice of Appeal by defts. from order of 3-14-60 denying defts. motion for rescission of the informal authorization granted to Chairman of Board of Monitors on 1-19-60; Deposed by Bergan, \$5.00; copies mailed to Herbert J. Miller, Jr.; Godfrey P. Schmidt; J. Benjamin Simmons and Robert Silagi	filed
Apr. 12	Cost Bond of John F. English with the Travellers Indemnity Co. in the amount of \$250.00 approved and	filed
Apr. 12	Notice of Appeal by defts. from order of Mar. 14, 1960 affirming with respect to Monitor Maher's petition for instructions; Deposit by Bergan \$5.00; copies mailed to Herbert J. Miller, Jr.; Godfrey P. Schmidt; J. Benjamin Simmons and Robert Silagi	filed
Apr. 12	Cost Bond of John F. English with The Travellers Indemnity Co. in the sum of \$250.00 approved and	filed

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF
COLUMBIA

JOHN CUNNINGHAM, et al ,
Plaintiffs,

v.

Civil Action No. 2361-57

JOHN P. ENGLISH, et al. ,
Defendants.

Petition for Instructions

Comes now the Petitioner, Daniel B. Maher, who respectfully represents to this Court as follows:

1. That he is a duly qualified and presently serving member of the Board of Monitors appointed by this Court in the above-entitled cause.
2. That on January 7, 1960, United States Court of Appeals for the District of Columbia Circuit entered an order in this cause, which reads in part as follows:

"It is ordered by the Court that the stay entered by this Court September 18, 1959, of the Order of the District Court of July 23, 1959, authorizing the engagement of the services of a firm of lawyers to assist the Board of Monitors, is vacated to the extent and with the effect that the Board of Monitors may engage the professional services of said firm of lawyers to assist them in litigation prudently and reasonably deemed by the Board to be required in the performance of the duties of the Board ***". (Emphasis supplied)

3. The Court of Appeals in its slip opinion of June 10, 1959, admonished the Board as follows:

"We point out also that the Monitors must use procedures which afford opportunity for all three Monitors to participate. Each (emphasis supplied) has responsibilities as an officer of the Court. "

4. At a meeting of the Board of Monitors with this Court on January 19, 1960, this Petitioner states that he understood the Court to instruct the Board as follows: That the Chairman should direct the activities of the law firm, and that the Board would pass upon any new substantive matters that were to be presented to the Court.

5. This Petitioner also understood the Court to instruct the Board that the Chairman was to have full authority to employ three additional staff lawyers for the purposes of litigation; and that the matter of the retention of the three additional lawyers should be vested only in the Chairman.

6. This Petitioner is an officer of the Court and is charged with the responsibility of the approval of disbursements to the law firm as well as the salaries of all employees of the Board. This Petitioner is likewise under bond for the faithful discharge of his duties.

7. Considerable sums of money are involved in this problem. The Board of Monitors, by a vote of two to one, in July of this year voted full authority in the Chairman to direct the law firm. From July 23 to September 18, a period of eight weeks, a bill was submitted by the law firm in the amount of \$18,585, which averages approximately \$125,000 a year.

8. This Petitioner is apprehensive that the instruction of this Court may be in conflict with the order of the appellate court; and because of the foregoing, he respectfully prays this Court that he be formally instructed:

- (a) Whether the activities of the law firm are to be directed by the full Board or the Chairman.
- (b) Whether the Chairman is vested with sole authority to retain three additional lawyers for the Board's Staff for the purposes of litigation.

/s/ Daniel B. Maher

Daniel B. Maher, being first duly sworn on oath according to law, states that he has read the foregoing Petition by him subscribed and knows the contents thereof and he verily believes the same to be true.

/s/ Daniel B. Maher

Subscribed and sworn to before me this _____ day of _____.

/s/

Notary Public

* * * * *

MOTION FOR RESCISSION OF INFORMAL AUTHORIZATION GRANTED TO CHAIRMAN OF BOARD OF MONITORS ON JANUARY 19, 1960, AND FOR DIRECTION TO BOARD OF MONITORS TO USE PROPER PROCEDURES

The defendants, except James R. Hoffa, by their undersigned counsel, hereby move the Court for an order (1) rescinding the informal authorization of January 19, 1960, to the Chairman of the Board of Monitors to exercise sole control of the activities of the Monitors' retained law firm and to hire three additional lawyers for the Monitors' staff; and (2) directing the Board of Monitors to use procedures affording an opportunity for all three Monitors to participate.

/s/ Edward Bennett Williams

/s/ Harold Ungar

/s/ Raymond W. Bergan

1000 Hill Building
Washington 6, D. C.

Attorneys for defendants
other than James R. Hoffa.

* * * * *

**POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR RESCISSION OF INFORMAL
AUTHORIZATION GRANTED TO CHAIRMAN
OF BOARD OF MONITORS ON JANUARY 19,
1960, AND FOR DIRECTION TO BOARD OF
MONITORS TO USE PROPER PROCEDURES**

1. It appears from the verified petition of Daniel B. Maher, Esq., filed herein on January 26, 1960, that, in a meeting of the Board of Monitors with this Court, on January 19, 1960, the Chairman of the Board sought and obtained from the Court Informal approval of the following:

(a) That the Chairman have sole authority to direct the activities of the law firm which the Board has retained, without any need for consultation with the other two Monitors except in connection with new substantive matters.

(b) That the Chairman have authority to hire three additional lawyers for the staff of the Board of Monitors to assist the Board in litigation.

2. On January 21, 1960, the Chairman of the Board sent the following letter to Mr. Walter Sheridan:

" January 21, 1960

Mr. Walter Sheridan
Senate Select Committee on
Improper Activities in the Labor
or Management Field
Senate Office Building
Washington, D. C.

Dear Walt:

This is to advise you that you are employed by the Board of Monitors, beginning February 1, 1960, at a salary of \$12,000 per annum. Judge Letts advised me in the presence of Messrs. Maher and Smith that as I must head up the litigation and the staff, I should be free to select the personnel I need on my staff.

Will you please advise me whether or not you will be ready to report to the Board of Monitors on February 1, 1960.

Very truly yours,

Martin F. O'Donoghue
Chairman, Board of Monitors

cc: Daniel B. Maher, Esquire
Lawrence T. Smith, Esquire"

3. Giving the Chairman of the Board of Monitors sole authority, to the exclusion of the other Monitors, over direction of the Monitors' law firm and over hiring of staff members is a flat violation of the consent decree as construed by the Court of Appeals. That Court said:

"We point out also that the Monitors must use procedures which afford opportunity for all three Monitors to participate. Each has responsibilities as an officer of the court." English v. Cunningham,
U. S. App. D. C. _____,
269 F. 2d 517, 530 (1959).

So far as control of the activities of the law firm is concerned, the Court of Appeals, in its order of January 7, 1960, further sharpened its mandate in this respect. Vacating, with restrictions, its stay of the order for engagement of the law firm, the Court of Appeals stated:

"... the Board of Monitors may engage the professional services of said firm of lawyers to assist them in litigation prudently and reasonably deemed by the Board to be required in the performance of the duties of the Board. . . ." (Emphasis supplied.)

4. The authorization to employ three additional staff members to assist the Board in litigation is unjustified, not only on the ground stated in paragraph 3, supra, but also on the ground of lack of necessity. For the greater part of the duration of the Monitorship, the Monitors, with the assistance of their staff, have managed to handle all litigation matters in which they could conceivably have any interest, as well as attending, according to their lights, to their Monitorial functions. In addition they have managed to

devote untold amounts of their time and of the International's funds to matters of litigation which are solely the concern of the plaintiffs and in which the Monitors have no business to concern themselves, such matters as quarrels among the plaintiffs as to who should represent the class and attempts by members of the class to intervene as additional plaintiffs. Ultimately, the Monitors decided that it would be wise for them to leave litigation to a firm of lawyers specifically retained for that purpose, so that the Monitors and their staff could devote themselves to the expeditious performance of proper Monitorial duties. Over the objection of the defendants, this Court, on July 23, 1959, authorized the Monitors to retain a firm of lawyers. That order was appealed by the defendants, and, on September 18, 1959, was stayed by the Court of Appeals. On January 7, 1960, however, the Court of Appeals dissolved the stay in an order authorizing the Monitors to employ the law firm in litigation work for a period of ninety days and directing them to report back to the Court at the end of that period. The only justification for this Court's order allowing the hiring of the law firm and for the Court of Appeals order dissolving the stay is the Monitors' oft-repeated assurance that the Board of Monitors would thereby be left free to attend to its proper Monitorial functions. In now seeking to augment their staff by hiring three more staff lawyers for litigation purposes, the Monitors show that they were less than candid in their earlier assurances to this Court and the Court of Appeals. Furthermore, they destroy the only justification they ever offered for retaining the law firm.

5. To allow the Chairman of the Board of Monitors to operate under this Court's informal authorization of January 19, 1960, would speedily convert the Monitorship into a one-man dictatorship in flagrant violation of the consent decree and the various pronouncements of the courts. For example, it took no more than two days after this Court's informal authorization herein complained of for the Chairman to write the letter quoted in paragraph 2 supra, in which he said:

" . . . as I must head up the litigation and the staff, I should be free to select the personnel I need on my staff." (Emphasis supplied.)

6. The effect of such a one-man dictatorship, moreover, will be a wanton disregard of the duty of care which the Board of Monitors must exercise in spending the International's money, a duty which Mr. Justice Frankfurter pointed out should be strictly enforced by the courts. See English v. Cunningham, 4 L Ed 2d 42, 45 (1959). Thus, in undertaking to employ Mr. Sheridan, the Chairman of the Board, without consulting the other Monitors, established his salary at a figure considerably higher than that received by any other member of the staff.

CONCLUSION

It is respectfully submitted, in the light of the foregoing, that this Court should (1) rescind the informal authorization granted to the Chairman of the Board of Monitors to direct the activities of the Monitors' law firm and to hire additional staff members; and (2) formally instruct the Board of Monitors to use procedures which afford opportunity for all three Monitors to participate, as required by the Court of Appeals.

/s/ Edward Bennett Williams

/s/ Harold Ungar

/s/ Raymond W. Bergan

* * * * *

**SEPARATE STATEMENT OF MONITOR
MAHER TO MOTION FOR RESCISSION
OF INFORMAL AUTHORIZATION.**

(1) This Monitor incorporates herein by reference all of the statements set forth in the Petition for Instructions filed by him on January 26, 1960.

(2) So as to clarify certain statements made in the reply of the Board of Monitors, this Monitor states that not until January 19, 1960 was it ever suggested that the Chairman had sole authority to hire any member of the staff. Until that date every employee of the staff was engaged only after a vote of the full board. At all times, however, the Court has vested supervision of the staff in the Chairman.

(3) The quotation in Paragraph 2 of the Board's reply relates to administering the staff but the attorneys for the Board would now interpret that to give the Chairman carte blanche to hire whomever he wishes and pay him what he chooses.

(4) This assertion is refuted by the Board's own records which show a vote taken on every new person employed by the Board. If the Chairman ever had such authority to hire and select personnel this is the first time he has ever asserted it.

(5) The Chairman endeavored to hire an investigator at \$12,000.00 per year. He was unable to get Board approval. He was not hired.

(6) To place this general authority on hiring and selection of personnel in the Chairman would be in conflict with the Consent Decree itself which requires the International to make available to the Board such clerical help as is reasonably required and necessary.

(7) Further, it is denial of full participation in Board functions, and a denial of each Monitor's right to exercise his responsibilities as an officer of the Court.

/s/ Daniel B. Maher
Monitor

* * * * *

**REPLY OF BOARD OF MONITORS TO
DEFENDANTS' MOTION FOR RESCISSION
OF INFORMAL AUTHORIZATION**

The instant motion, by its terms, is grounded on the statements of Monitor Daniel B. Maher in his Petition for Instructions filed in this cause on January 26, 1960. Defendants' virulent charges of lack of candor and "one man dictatorship" by the Chairman, require a full statement of Monitorial procedures in the challenged area.

1. **MONITORIAL PROCEDURES RELATIVE TO USE
OF LAW FRIM IS CLEARLY CONSONANT WITH
ALL DIRECTIVES OF THE COURTS.**

As directed by the district court, all three Monitors must participate in the decision whereby the Board participates in such litigation as it prudently and reasonably deems to be required in the performance of its duties. After such full participation by all three Monitors the procedural implementation of the Board's substantive decision in these matters is handled by the impartial Chairman.

Nonetheless, any Monitor may participate in any court hearing involving the Board and there, both orally and in writing, present his independent views in either affirmance or dissent from the action of the Board. Indeed, Monitor Maher has on a number of occasions availed himself of this right as has the Chairman.

Clearly, then, the present procedure affords every opportunity for each Monitor to participate in Board functions, consistently with one of the broad overall functions of the Board, i. e., aiding the district court to ensure compliance with defendants judicially imposed obligations. It plainly does not, as defendants allege, give the Chairman of the Board sole authority over the utilization of the law firm hired by the Monitors.

To require full Board participation in the drafting and filing of each individual motion and brief in the conduct of every facet of litigative activity could well cause a paralysis of the Board's efforts to ensure defendants compliance with their obligations. Such a course is not only impractical but uneconomic. Substantially more time would be spent with a consequent significant increase in cost if such an arrangement were to be followed.*

Moreover, as the defendants quite properly observe, it seems likely that inter alia, a refusal to allow defendants to thwart the Board's function with a mass of litigation impelled the Court of Appeals to vacate the stay of the order appointing counsel for the Board. (English v. Cunningham, No. 15,339, Order of January 7, 1960) Thus, defendants' suggestion that the language of the Court of Appeals, uttered in the very act of dissolving the stay, now requires the Board to follow procedures which would inevitably impede the realization of the goals of the Consent Order, must be rejected out of hand.

* It should be noted that Monitor Maher in his separate report to the district court In the Matter of Noto-Local 667, October 30, 1959, reaffirmed his "right to discuss fully and completely all of the business of the Board of Monitors with the defendants..." and his intention to discuss with Union Officials and their counsel without any restriction imposed by the Chairman, "any matter pending before the Board of Monitors; and furthermore I intend to advise them of all business before it." (Emphasis in original).

2. DIRECTION OF STAFF BY IMPARTIAL
CHAIRMAN IS REASONABLE, PROPER
AND NECESSARY.

The district court has a clear duty to supervise the operation of its officers in order to ensure that they administer the judicially invested tasks with maximum efficiency and economy. Upon consideration of the tripartite nature of the Board of Monitors, and of the purposes for which it is constituted, the district court has found that the efficient and economical discharge of the Board's duties requires that the administration of its staff should be vested in one person. Exercising its supervisory prerogatives over its officers, the court has vested such administrative responsibility in the impartial Chairman who is, as are all the Monitors, subject to the direct and continuing supervision of the court.

The eminent reasonableness and propriety of this procedure has been recognized and approved by the Chairman and Monitor Maher. Thus the minutes of the Board of Monitors for July 22, 1959 state:

"Member Maher expressed the view that the Chairman had capably administered the Staff in the past and should continue to do so. The Chairman agreed with Member Maher."

Each Monitor, of course, is additionally entitled to his own staff analyst and secretarial help.

It should be noted that irrespective of this authority the Chairman, as a matter of courtesy, has always submitted the hiring and selection of staff personnel to the entire Board.

Defendants' unseemly charges that the retention of additional staff by the Monitors indicates a lack of candor in their representation to the Court of Appeals in Appeal No. 15,399 (re appointment of law firm) cannot be sustained.

As defendants well know one of the justifications advanced by the Board for the appointment of counsel was the impossibility of retaining on a temporary, salaried basis, the experienced and qualified counsel necessary to assist them in this litigation. This counsel has now been made available to the Board through the use of the law firm. The retention of additional staff to aid in litigation is intended to free members of the firm from certain routine and less demanding litigative tasks - thus effecting a direct saving to the International's treasury.

Thus, far from reflecting a lack of candor on the part of the Monitors, this attempt at economy indicates a scrupulous compliance with judicial expressions of the desirability of economy in the operation of the Monitorship.

Ultimately, it should be noted that Mr. Walter Sheridan has not been retained by the Board, and that the only staff addition effected under the Chairman's authority since the filing of the petition by Monitor Maher has been the hiring of two additional attorneys, one of whom is a replacement for Mr. Mandelbaum who has recently resigned from the staff.

CONCLUSION

The facts of this matter clearly establish that the administration of the Monitorship is conducted with meticulous compliance with all applicable judicial directives.

These same facts give the lie to defendants' unfortunate ad hominem reflections upon the Monitors' candor, integrity, and the performance of their judicially invested duties.

WHEREFORE, the defendants motion should be denied.

Respectfully submitted,

/s/ Herbert J. Miller, Jr.

/s/ Raymond G. Larroca
of

Kirkland, Ellis, Hodson, Chaffetz & Masters,
800 World Center Building,
Washington 6, D. C.
Attorneys for the Board of Monitors.

* * * * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----- :
JOHN CUNNINGHAM, et al :
 : Plaintiffs, :
 : :
 : v. :
JOHN F. ENGLISH, et al, :
 : Defendants. :
----- :

Civil Action
No. 2361-57

Washington, D. C.,
Monday, March 7, 1960.

The above-entitled matter came on for hearing before the
HONORABLE F. DICKINSON LETTS, United States District Judge.

APPEARANCES

MARTIN F. O'DONOGHUE, ESQ.
Chairman, Board of Monitors

DANIEL B. MAHER, ESQ.
Appearing as a Monitor

LAWRENCE T. SMITH, ESQ.
Appearing as a Monitor

HERBERT J. MILLER, JR., ESQ.
For The Board of Monitors

JOHN J. CASSIDY, ESQ.
For The Board of Monitors

LAURENCE J. COHEN, ESQ.
For The Board of Monitors

RAYMOND H. HANDEL, ESQ.
For The Board of Monitors

RAYMOND W. BERGAN, ESQ.
Counsel for Teamsters

HAROLD UNGER, ESQ.
Counsel for Defendants

HERBERT THATCHER, ESQ.
Counsel for Defendants.

* * * * *

39 MR. BERGAN: * * * * *

Now, I don't mean to stand here and tell Your Honor that I think that every "T" should be crossed, and every "I" dotted in every brief or pleading filed on behalf of the Board of Monitors after a full consultation by the Board of Monitors. I don't necessarily intend to stand here and tell Your Honor that the language of each and every paragraph in each and every pleading filed by the Board of Monitors must be hammered out among the full board, but what I do intend to stand here and tell Your Honor is that the thrust and purpose of every Monitor's pleading ought to be the subject of discussion among the full Board of Monitors,

* * * * *

43 MR. BERGAN: * * * * *

I do want to tell the Court that the scope of the work undertaken by the Board of Monitors' law firm, the direction that work takes, the matters which it brings into court, and the way, the way in which these matters are brought into court, must necessarily, under the language of the Consent Decree, and under the language of the Court of Appeals, be the subject of full Monitorial consultation, discussion and debate.

* * * * *

54 MR. O'DONOGHUE: * * * * *

"Daniel B. Maher, being first duly sworn on oath, deposes and says:

1. That he is a Member of the Board of Monitors appointed by the U. S. District Court in the above-entitled cause.

2. That on April 16, 1959, the Board met with the Court to resolve certain questions which had arisen in connection with the administrative authority of the Chairman, that the Court advised the Board that the Chairman was his direct appointee and he had general

administrative authority with respect to conducting the affairs of the Board, and in filing and preparing all briefs, motions and other pleadings.

3. That the substance of this direction of the Court was communicated by this affiant to the defendants and counsel for the defendants.

4. That on July 16, 1959, the Board again met with the Court with respect to Board procedures. The Court advised it that the Chairman should have the widest leeway in conducting the affairs of the Board. The Court further stated that the Chairman should handle all of the procedural phases of the pending litigation and that consultation with the other Monitors on procedural matters was not necessary.

55

5. This statement was likewise communicated by this affiant to the defendants and their counsel. A few days after the Board filed a pending motion to vacate the stay of the order appointing the law firm, Raymond Bergan, Counsel for the Defendants, inquired of this affiant whether he had been consulted by the Chairman prior to the filing of this motion, and this affiant stated that he had not been consulted."

* * * * *

68

MR. BERGAN: * * * * *

Now, if the Court please, we are not asking for very much this morning. We are asking that the Chairman of the Board of Monitors act as a Chairman of a board, not a one-man ruler of the International Union. We are asking that the Board make decisions as to whether additional personnel for the Board are necessary. We are asking that they make the decisions as to who these additional personnel will be, if they are deemed necessary.

Mr. O'Donoghue concedes that there is a vote on the salary. We are not apart on that issue. We are asking further with respect to the staff that the Board decide what the staff does. With respect to the law firm, we are asking simply that the Board of Monitors decide what the law firm is going to do. It's as simple as that. It would seem to me that to ask the question is to answer it, and that's why I say I am very much surprised to receive some opposition from this motion this morning.

* * * * *

69

THE COURT: Gentlemen, I have been asked in two motions, one by Mr. Maher, and the other by the defendants, to vacate an oral direction which I have heretofore given to the Monitors, placing certain administrative duties with the Chairman of the Board. I don't know any other way to do it. You can't settle administrative matters by referring them to a debating society. Someone has to have the authority, and in the usual procedure where a chairman is placed over a board, that chairman is the one who must exercise the administrative duty. I think I was right. I am perfectly willing to stand upon my previous action. Accordingly, Mr. Maher's motion, and the motion of the defendants, will be denied. Mr. O'Donoghue, please see that I have an appropriate order.

* * * * *

ORDER

Upon consideration of Member Maher's petition for instructions concerning the authority of the Chairman of the Board of Monitors to direct the activities of the law firm and the staff of the Board of Monitors, defendants' motion for rescission of the informal authorization granted to the Chairman on January 19, 1960, and for direction to the Board to use proper procedures, the reply of the Board of Monitors thereto, Member Maher's separate statement thereon, and after hearing argument of counsel, it is by the Court this 14th day of March, 1960,

ORDERED, that the defendants' motion for rescission of informal authorization be and the same is hereby denied.

/s/ F. Dickinson Letts
Judge

Have seen:

/s/ Raymond W. Bergan
Counsel for Defendants

/s/ Martin F. O'Donoghue
Chairman, Board of Monitors

ORDER

Upon consideration of Member Maher's petition for instructions concerning the authority of the Chairman of the Board of Monitors to direct the activities of the law firm and the staff of the Board of Monitors, defendants' motion for rescission of the informal authorization granted to the Chairman on January 19, 1960 and for direction to the Board to use proper procedures, the reply of the Board of Monitors thereto, Member Maher's separate statement thereon, and after hearing argument of counsel, it is by the Court this 14th day of March, 1960,

ORDERED, that the instructions of the Court on January 19, 1960 are hereby affirmed.

/s/ F. Dickinson Letts
Judge

Have seen:

/s/ Martin F. O'Donoghue
Chairman, Board of Monitors

/s/ Daniel B. Maher
Member, Board of Monitors

NOTICE OF APPEAL

Notice is hereby given this 12th day of April, 1960, that defendants hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 14th day of March, 1960, affirming, with respect to Monitor Maher's petition for instructions, the informal instructions given January 19, 1960.

/s/ Raymond W. Bergan

Attorney for Defendants

* * * * *

NOTICE OF APPEAL

Notice is hereby given this 12th day of April, 1960, that defendants hereby appeals to the United States Court of Appeals for the District of Columbia from the judgement of this Court entered on the 14th day of March, 1960, denying defendants' motion for rescission of the informal authorization granted to the Chairman of the Board of Monitors on January 19, 1960.

/s/ Raymond W. Bergan

Attorney for Defendants.

* * * * *

BRIEF FOR BOARD OF MONITORS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,677

JOHN F. ENGLISH, ET AL.,
Appellants,

, v.

JOHN CUNNINGHAM, ET AL.,
Appellees.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED JUN 9 1960

Joseph W. Stewart

CLERK

No. 15,682

JOHN F. ENGLISH, ET AL.,
Appellants,

v.

JOHN CUNNINGHAM, ET AL.,
Appellees.

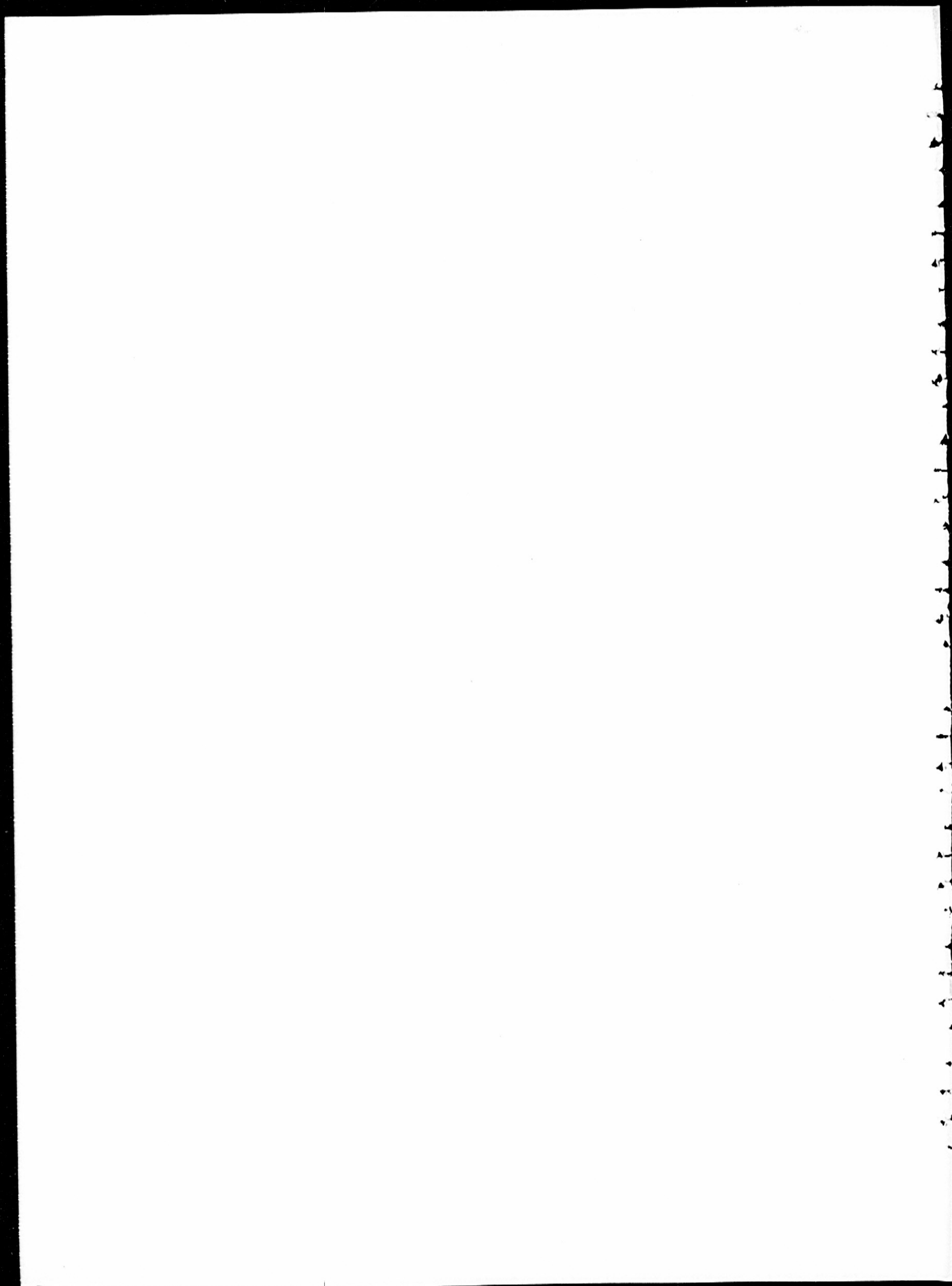
CONSOLIDATED APPEALS FROM ORDERS
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HERBERT J. MILLER, JR.
RAYMOND G. LARROCA

of

KIRKLAND, ELLIS, HODSON, CHAFFETZ &
MASTERS

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Counsel for the Board of Monitors

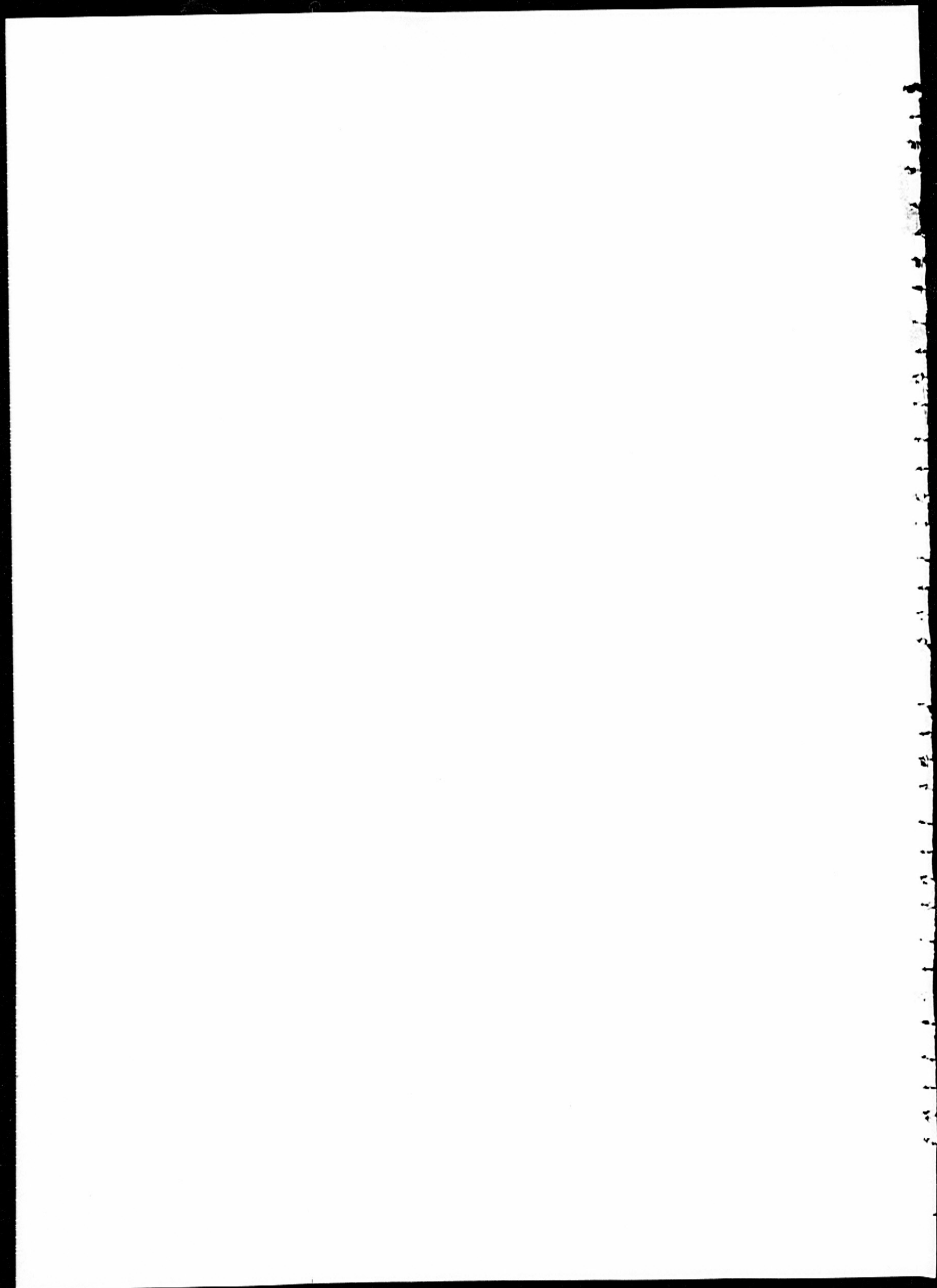


(i)

QUESTIONS PRESENTED

In the opinion of the Board of Monitors, the questions presented are:

1. Whether the procedural directions by the District Court, issued in the "supervision and direction" of the performance of its officers' duties, are appealable under 28 U.S.C. § 1292 (a) (1).
 2. Where the District Court found that the discharge of the duties for which a tripartite Board of its officers was appointed required that administrative direction of counsel appointed to assist this Board be vested in its Chairman, a majority vote of the Board being required to authorize the firm to undertake assignments designed to attain certain goals, including measures in defense of litigation instituted by appellants and others, did the District Court abuse its discretion in directing that such procedures be followed by its officers?
 3. Where the District Court found that the discharge of the duties for which a tripartite Board of its officers was appointed required that the selection of personnel and administrative direction of the staff employed to assist the Board be vested in its Chairman, and where approval by a majority of the Board is required to authorize the expenditure of salaries paid to such personnel, did the District Court abuse its discretion in directing that such procedures be followed by its officers?
-



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UNITED STATES COURT OF APPEALS
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Appellees.

CONSOLIDATED APPEALS FROM ORDERS
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR BOARD OF MONITORS

Alleging the purported authority of (1) the Consent Order and (2) selected directives of this Court, appellants (defendants below) sought to force the District Court to require the Board of Monitors to observe certain rules of internal procedure which would grievously hamper the Board in the performance of its duties, and hence render it an ineffective and inefficient instrument for the assistance of the Court in the implementation of the goals of the Consent Order.

This the District Court refused to do, and in the exercise of its discretion, not only refused to rescind certain informal procedural directives under which its officers had operated for over a year, but also specifically affirmed such procedures. From the reaffirmation of those instructions, and from the District Court's refusal to rescind them, defendants-appellants appeal.

STATEMENT OF THE CASE

Appellants' Statement of the Case represents the informal instructions of the District Court to the Board of Monitors on January 19, 1960, as being the starting point of some new, different and radical manner of administration of the Board, allegedly in conflict with the Consent Order and certain statements made by this Court. As will be detailed herein, this representation is not accurate. Even more misleading is appellants' description of the nature, scope and thrust of the challenged instructions, evidently designed to alarm this Court by providing a vestige of reasonableness to their free wheeling predictions of what might happen if the instructions were in fact what they paint them to be.

I

The District Court's informal instructions to the Board in regard to the Chairman's supervisory role in litigation involving the Board has been the modus operandi of the Board for well over a year. Monitor Maher and the appellants were well aware of these procedures as far back as April 16, 1959. (J.A. 17, 18)

After the law firm was retained by the Board, the supervisory role of the Chairman regarding the Board's litigation continued. Thus, whenever a majority of the Board decided that for the performance of their monitorial duties the assistance of counsel was necessary, the Chairman implemented that decision by supervising the activities of

the law firm in effecting the goal directed by the Board's action.*

The procedures described above in no way enabled the Chairman to use the law firm against the wishes of the majority of the Board.**

Subsequently, on January 19, 1960, the Board of Monitors met with Judge Letts in chambers. At that meeting, the District Court, inter alia, merely restated its long standing position, i.e., that the Chairman was authorized to supervise and direct the procedural aspects of legal assignments given to the law firm at the instance of a majority of the Board.

Indeed, by formal action on August 7, 1959, a majority of the Board of Monitors delegated authority to its Chairman to "designate the work which the monitors' law firm will do on behalf of the monitors". (Minutes of Board of Monitors, August 7, 1959, Monitor Maher dissented.)

As stated by the Chairman, without contradiction by the District Court, the Court's informal instruction, even more restrictive than the authority granted by a majority of the Board to the Chairman, "clearly defined" that new substantive matters, and the reference of such matters to the law firm "should be taken up by the Board of Monitors en banc, as a Board, and then referred to the law firm." (Tr. 55) (emphasis added) Once those matters were referred, however, ". . . the direction of the activities of the law firm with respect to the procedural aspects of carrying out that order of the Board of Monitors was to be in the Chairman" (Tr. 55), since, he noted, the Court had stated that ". . . when you once employ a law firm and you direct them to take litigation . . . you couldn't be having three hydraheaded individuals*** attempting to direct the activities

* The record of the parent litigation below clearly reveals that such goals were largely defensive measures — i.e., opposing attacks by defendants and others upon actions of the Monitors, the Consent Order and the Monitors themselves. See Report of Board of Monitors Relative to the Use of Counsel filed in Appeal No. 15,339 on April 8, 1960.

** The fact that appellants are reaching for issues is graphically illustrated by their gratuitous charge (Br. p. 3) that because of the Chairman's alleged "sole authority to direct the law firm's activities", the opposition to the appellants' Motion to Rescind the Informal Instructions below represented the views of the Chairman alone.

A reading of the Minutes of the Board of Monitors for February 9, 1960, clearly shows that on Monitor Smith's motion, a majority of the Board authorized the law firm to participate in this litigation.

*** Parenthetically, it goes without saying that while emphatically making the point, the description is not intended to suggest that any Monitor has more than one head.

as to how that litigation was to be conducted." (Tr. 55, 56) (emphasis added throughout)

Thus, it is clear that the Chairman's sole "control" vis-a-vis the law firm consists solely of implementing substantive decisions of a majority of the Board, by directing procedural matters which the Court below in its discretion decided could not be efficiently directed by a tripartite Board.

Accordingly, appellants' horrendous predictions that the Chairman might use the law firm for his own purposes against the wishes of the majority of the Board, or even preclude a majority of the Board from using the law firm simply could not happen under the instructions here challenged.

II

Nowhere is the transparency of appellants' case more apparent than in their treatment of the "facts" dealing with the administration of the staff of the Board of Monitors. Thus they characterize the informal instructions of the District Court as conferring upon the Chairman of the Board of Monitors the power to

" . . . hire such members of the staff of the Board of Monitors as he may choose and at such salaries as he may choose." (Br. - "Questions Presented")

The facts, as stated by the Chairman to the District Court, without contradiction by that Court, are that

"All that [the District Court] did with respect to the employment of . . . staff members . . . was to give the Chairman the right of selection. The matter would then be put to the Board of Monitors and the Board [would] pass on it . . ." (Tr. 59, 60)(emphasis added)

Moreover, the fact that the Chairman never sought and in fact was never granted the power "to hire such members of the staff of the

Board of Monitors as he may choose and at such salaries as he may choose" is elsewhere repeatedly refuted by the record. (Tr. 56, 57, 58)

Most significantly, the records of the Board of Monitors reveal that no funds have been expended by the Board for the payment of staff salaries without approval by a majority of the Board, either before the informal instructions of January 19, or thereafter!

III

In the light of the foregoing, the District Court noted that, although it had been asked to vacate its oral directions to its officers, placing certain administrative duties with the Chairman of the Board (J.A. 19), it "[did not] know any other way to do it" since

"you can't settle administrative matters by referring them to a debating society. Someone has to have the authority, and in the usual procedure where a chairman is placed over a board, that chairman is the one who must exercise the administrative duty. I think I was right. I am perfectly willing to stand upon my previous action." (J.A. 19)

On March 14, 1960, the District Court entered orders (1) affirming its informal instructions of January 19, 1960 (J.A. 20) and (2) denying appellants' motion for their rescission. (J.A. 19)

Appellants moved for a stay of the orders in the District Court and after filing a notice of appeal (J.A. 21) moved for similar relief in this Court. Neither motion has been acted upon.

The appeals from the two orders of the District Court were consolidated by this Court's order of May 5, 1960.

STATUTES AND ORDERS INVOLVED

Section 1292 (a) (1), Title 28, United States Code, provides:

"(a) The courts of appeals shall have jurisdiction of appeals from:

"(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;"

Paragraph 2 of the Consent Order entered in Cunningham v. English, C.A. 2361-57, on January 31, 1958, provides in pertinent part:

"2. . . . Furthermore, the Monitors are at all times subject to removal by this Court in the exercise of its discretion for any cause and are subject as officers of the Court to supervision and direction in performing these duties as hereinafter enumerated."

SUMMARY OF ARGUMENT

Admitting that the orders presented for review do not possess the requisite finality for appellate review under 28 U.S.C. § 1291, appellants seek to invest the administrative directions of the District Court with an "injunctive" nature and thus convert them into appealable orders under 28 U.S.C. § 1292 (a) (1). To confer validity upon such a semantic exercise would run counter to settled law and thwart the long established and salutary policy against piecemeal appellate review. The great number of appeals generated by the parent case below, and the resultant pace of that proceeding, illustrates the wisdom of strict adherence to that policy.

The informal instructions which were respectively affirmed and denied rescission by the orders presented for review, are materially different in thrust and substance from their representation by appellants.

Moreover, as the record will confirm, the instructions as actually rendered are clearly consonant with the Consent Order and directives of this Court.

Thus, the decision to achieve a particular goal requiring the assistance of counsel is made by the Board of Monitors by majority vote and after full discussion. Only the procedural implementation of the order of the Board of Monitors is handled by the Chairman, who supervises the operation of the law firm in achieving the end ordered by the Board. The hammering out of the thrust and purpose of every Monitor pleading by the full Board as requested by appellants, would not only nullify every advantage of the assistance of counsel, but, as the lower court undoubtedly found, would not permit the Monitors to properly discharge their duties under the Consent Order.

Similarly, the instructions below simply do not give the Chairman the extensive powers posited by appellants. The administration and selection of the staff of a tripartite Board by its Chairman was found to be necessary for its efficient operation, but the ultimate control, i.e., the power to approve salaries, lies with the majority of the Board.

Accordingly, appellants have advanced no valid reasons why this Court should revise procedural directives of the District Court issued in compliance with its duty to effect the "supervision and direction" of the performance of the Monitors' duties. (Consent Order, par. 2)

ARGUMENT

I

THE ORDERS SOUGHT TO BE REVIEWED ARE NOT
APPEALABLE ORDERS

Appellants quite properly concede at the outset (Br. p. 1) that the orders sought to be reviewed do not possess the requisite finality for the purposes of appeal. This they do by specifically positing Section 1292 (a) (1)* of Title 28, United States Code, as their sole jurisdictional basis for review by this Court. This section confers upon the courts of appeals the jurisdiction to review certain specifically described interlocutory decisions, i.e., "Interlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions . . ."

The District Court, with its intimate knowledge of this litigation, in an exercise of its discretion, issued administrative directives to its officers which it felt absolutely necessary for the efficient discharge of their judicially invested duties. (J.A. 19) From the very terms of the orders (J.A. 19, 20) it is clear that neither the affirmance of these informal instructions, nor the refusal of the District Court to rescind them, fall within the narrow class of orders reviewable under Section 1292 (a) (1).

Nor, can appellants be permitted, by semantic exercise, to confer upon a mere administrative order or the refusal to rescind one, the "injunctive" nature necessary to bring it within the scope of Section

* §1292. Interlocutory decisions.

"(a) The courts of appeals shall have jurisdiction of appeals from:

"(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;"

1292(a)(1). United States v. Fauci, 242 F.2d 237 (1st Cir. 1957);
Waylyn Corporation v. Casalduc, 219 F.2d 888, 889-90 (1st Cir. 1955).

Thus, where the United States, in a proceeding against the property of delinquent taxpayers, attempted to appeal an order of the District Court directing trustee-defendants to pay out \$200 a month from the income of the property to certain other defendants, the Court of Appeals for the First Circuit dismissed the appeal for lack of jurisdiction under 28 U.S.C. § 1292 (1),* noting that,

" . . . if the term 'injunction' as used in [§ 1292 (a) (1)] is so broadly defined as to include [such orders], then it would follow that any number of other purely interlocutory orders . . . would also be appealable and the established policy against piecemeal review . . . would be thwarted." United States v. Fauci, supra, at p. 238.

Indeed, even where an order of a district court directed the defendant to turn over certain cash deposits to a receiver, the order was specifically held not to be an interlocutory order granting an injunction, but a mere administrative direction and thus not appealable under 28 U.S.C. § 1292(a)(1). Waylyn Corporation v. Casalduc, supra.

In view of its myriad and constantly growing appellate facets, and appellants' proclivity for the appeal of almost every adverse ruling of the District Court, the rationale of the Waylyn and Fauci cases is particularly apposite to the over-all litigation relating to the Consent Order. Indeed, the present pace of proceedings below graphically highlights the wisdom of Justice Frankfurter in noting that "to be effective, judicial administration must not be leaden-footed . . . " since "its momentum would be arrested by permitting separate reviews of the component elements in a unified cause." Cobbledick v. United States, 309 U.S. 323, 325 (1939).

* The former designation of Section 1292(a)(1).

All of the above cited principles are especially applicable to the instant appeals, insofar as they concern instructions of the District Court issued in the "supervision and direction" of its officers — a function which was not only specifically committed to the District Court by paragraph 2 of the Consent Order, but also, as a matter very much within the discretion of that Court, one which rarely, if ever, is interfered with by an appellate tribunal. Cf. English v. Cunningham, 106 U.S. App. D.C. 70, 269 F.2d 517, 526 (1959); Jenkins v. Purcell, 29 App. D.C. 209 (1907).

In fine, notwithstanding appellants' facile attempts to balloon these orders of the District Court into flagrant violations of the Consent Orders and directives of this Court, the orders sought to be reviewed are nothing more than "procedural direction[s] by the Court to its Special Master which [are] not . . . matter [s] on which an appeal may be based." In re Pittsburgh Rys. Co., 164 F.2d 488 (3rd Cir. 1947).*

These appeals should be dismissed.

II

MONITORIAL PROCEDURES RELATIVE TO THE USE OF THE LAW FIRM CLEARLY CONSONANT WITH ALL APPLICABLE JUDICIAL DIRECTIVES

A. Challenged Procedures Are Not Only In Harmony With The Consent Order, But Required For The Realization Of Its Ob- jectives.

The informal instructions of the District Court do not suspend the requirement that all three Monitors must participate in the decision whereby the Board participates in such litigation as it prudently and reasonably deems to be required in the performance of its duties. After such full participation by the Monitors, as a Board, the procedural implementation of the substantive decision of the majority of the Board

* Even if the orders were appealable, appellants are not the proper parties to appeal. For, other than through wildly exaggerated and intemperate predictions, based on compounded hypotheses drawn from a palpably distorted record, they have failed to make any showing of injury.

Indeed, if anyone were to have the right of appeal, it would appear to be the allegedly aggrieved Monitor who voted against the Board's delegation of administrative authority to the Chairman. (*infra*, footnote p. 13)

is handled by the Chairman.*

Nonetheless, any Monitor may participate in any court hearing involving the Board, and thus, both orally and in writing, present his independent views in either affirmance or dissent from the action of a majority of the Board. Indeed, the Chairman, Monitor Bufalino and former Monitor Maher have availed themselves of the right of individual access to the Court, either in dissent from majority actions or via a petition for instructions.

The District Court, however, in its uniquely informed position, correctly surmised that to require full Board participation in the drafting and filing of each individual motion and brief in the conduct of every litigative activity would inevitably cause the rapid and complete deterioration of the Board as an effective instrument to aid the Court in ensuring defendants' compliance with the Consent Order under which they hold provisional office.**

Under such circumstances the District Court, having been specifically charged by the Consent Order with the "supervision and direction" of the Monitors' performance of their duties,^{***} was duty-bound to

* Appellants' arguments that the Chairman could preclude the use of the law firm by a majority of the Board, and could utilize the services of the firm to espouse his own position as against that of a majority of the Board (Br. 6) simply do not hold water because the Chairman does not have the power that appellants, at least for the purposes of these appeals, would like him to have. Their suggestion that if "the Chairman utilized the law firm in the preparation of [his own] Interim Report" (Br. 6) the law firm would thus be blocked from espousing the position of the majority of the Board (Br. 6) is nothing more than the compounding of erroneous hypotheses.

Of similar ilk are their predictions that the District Court's instructions would produce an "authoritarian institution controlled by one man" (Br. 11) who allegedly would institute "rampaging investigations" (Br. 11) and cause the law firm "to institute multitudes of proceedings." (Motion for Stay, Instant Appeals, p. 26).

** One element in the court's decision might well have been the knowledge that the defendants' Monitor conceived his duty to require full and complete disclosure to the defendants of every matter before the Board and had so stated under oath. (See J.A. 13) Appellants' foreknowledge of every procedural facet of a presentation about to be made to the District Court would be a powerful weapon with which to discredit the majority of the Board who had requested either affirmative legal action, or the defense against the many actions instituted by appellants.

*** Consent Order, Par. 2.

exercise its discretion and prescribe suitable operational procedures for its officers, under which they might most efficiently and economically perform their appointed duties.

Moreover, appellants' attempt to create a conflict between these instructions and the provisions of paragraph 2 of the Consent Order relative to a majority vote of the Board of Monitors ignores the long established and eminently reasonable rule that individual parts of a decree cannot be considered in vacuo. Rather, they must be read in light of the other paragraphs of the Consent Order and the allegations of the complaint. Schine Chain Theatres v. United States, 334 U.S. 110, 125 (1948); Swift & Co. v. United States, 276 U.S. 311, 328 (1928).

Thus, the requirements of the Consent Order cannot be defined, nor its purposes served — as appellants would have it — by the slavish application of abstract words and phrases to a set of operative facts. The "nature and extent" of the Order,

" . . . is not to be determined by seizing upon isolated parts of it or passages in the opinion considering the rights of the parties, but upon an examination of the issues made and intended to be submitted, and what the decree was really designed to accomplish." Vicksburg v. Henson, 231 U.S. 259, 273 (1913) (emphasis added)

There can be no question that one of the primary objectives of the Consent Order was to bring about "a situation in which new elections of a de jure and non-provisional character could be held, consistently with the legal rights of the plaintiffs and those for whom they act." English v. Cunningham, 106 U.S. App. D.C. 70, 269 F.2d 517, 523-24 (1959).

Nor can it be denied that the Board of Monitors was established to aid the District Court in seeing that appellants did bring about such a situation by, inter alia, in turn ensuring that appellants honored the individual substantive obligations imposed by the Consent Order.

Appellants' demands — that the ". . . thrust and purpose of every Monitor's pleading" be ". . . the subject of discussion among the full Board of Monitors" (J.A. 17); and that not only the goal of the law firm's work, but also "the way . . . in which these matters are brought into court . . ." must be the subject of "full Monitorial consultation, discussion and debate" (J.A. 17) — were rejected by the District Court as inconsistent with the accomplishment of the avowed objectives of the Consent Order and the continuance of the Monitors as efficient aids to the Court in achieving these objectives.

Accordingly, the instructions of the Court to its officers, rendered in consideration of the purposes of the Consent Order, of the duties of said officers, and of the practical exigencies of the efficient operation of a tripartite Board, were clearly within its discretion to issue, and most importantly, in complete harmony with the requirements of the Consent Order.*

* Significantly, appellants admit that under the Consent Order "the Board of Monitors has power, either by informal consensus or by formal resolution, to delegate to its Chairman such matters of administration as it deems desirable..." (Br. p. 9)

Yet the minutes of the Board of Monitors' meeting of August 7, 1959, reflect precisely such action:

"It was moved and seconded that the Chairman of the Board of Monitors is authorized to designate the work which the monitors' law firm will do on behalf of the monitors. The motion was passed with Member Maher opposed, stating that he will submit a dissent."

It might also be noted that the minutes of July 27, 1959, reflect the fact that the Board expressly agreed that Monitors, other than the Chairman, were of course "free to discuss" with the law firm "questions involving litigation which the law firm had been authorized to undertake on behalf of the Board".

B. Challenged Procedures Conform With Directives Of This Court.

1. The rationale of the Schine Theatres, Swift and Vicksburg cases, cited supra, p. 12, rejecting the interpretation of a judicial decree based solely on "isolated parts of it or passages in the opinion considering the rights of parties", Vicksburg v. Henson, 231 U.S. at 273, is clearly dispositive of appellants' claim (Br. p. 7) that a part of this Court's opinion in English v. Cunningham* must be interpreted so as to deprive the District Court of all discretion** in the "supervision and direction" of its officers in the performance of their duties.

Even less should this part of this Court's opinion be used as a club with which to force the District Court to require its officers to operate under procedures which that Court, in its uniquely informed position as the Monitors' constant supervisor, undoubtedly has assessed as not permitting them to perform the duties for which they were appointed.

2. By the same token, it cannot be argued that the order of this Court of January 7, 1960, in Appeal No. 15,339, which lifted the stay of the order appointing counsel to assist the Board, conflicts with the challenged instructions.

It would appear that the lifting of the stay by this Court was impelled, inter alia, by a recognition that the need for the assistance of counsel for the Board was critical, lest its remedial functions be stymied by the burden of litigation generated by appellants.

Yet, to require that after the Board makes a substantive decision to achieve a litigative goal, that all three Monitors must hammer out in fine detail every step looking to the consummation of that goal,*** would, in practice, nullify every advantage flowing from the appointment of counsel and increase the costs tremendously.

* 106 U.S. App. D.C. 70, 269 F. 2d 517, 530 (1959).

** Vested in the Court by general law and by the Consent Order itself.

*** See J.A. 17.

Accordingly, appellants' contention that the language of this Court, uttered in the very act of dissolving the stay, now requires the Board to follow procedures which would effectively negative the advantages which the assistance of counsel would confer upon the Board, and thus, inevitably impede the realization of the goals of the Consent Order, has at best a negligible appeal.

III

DISTRICT COURT'S INSTRUCTION RELATIVE TO ADMINISTRATIVE DIRECTION OF STAFF OF THE BOARD OF MONITORS REASONABLE, PROPER AND NECESSARY

A. Scope of Instruction Not Accurately Represented by Appellants.

Appellants would have this Court believe that the District Court empowered the Chairman of the Board of Monitors with

" . . . sole authority, to the exclusion of the other two Monitors, to:

"(1) . . .

"(2) hire such members of the staff of the Board of Monitors as he may choose and at such salaries as he may choose." (Brief "Questions Presented")
(emphasis added)

No such authorization was ever sought, or received, by the Chairman of the Board of Monitors from the District Court.*

* The District Court, of course, both inherently and under the Consent Order, has the power to direct that clerical and technical assistance be retained by the Board.

Thus, Paragraph 12 of the Consent Order requires appellants to provide such "help as is reasonably required and necessary". Appellants' suggestions (Br. 9) notwithstanding, the determination of what "is reasonably required and necessary" is not, even by the Consent Order, lodged exclusively with the Board. Indeed, if this were the case the District Court could conceivably find itself in the patently ridiculous posture of watching its officers refuse to hire the help needed to discharge the duties for which they were appointed, and, short of removal, being powerless to remedy the situation.

Moreover, both appellants and Monitor Maher — whose representations formed the admitted basis for appellants' motions for rescission, etc., below — were well aware of this fact even before the notices of appeal were ever filed in this case.

Thus, in the course of the proceedings below, the Chairman repeatedly stated that the scope of his authorization was restricted to selection of personnel for the Board's staff, but that the hiring and salary would have to be effected by a Board action. (Tr. 56, 57, 58, 59, 60)

That this was clearly understood by appellants is confirmed by the statement of their counsel, who noted that in respect to staff members

"Mr. O'Donoghue concedes that there is a vote on the salary." (Tr. 68)

Indeed, even former Monitor Maher, a full week before the District Court heard arguments on appellants' motion to rescind the challenged instructions, effectively conceded that the Chairman had no such power.

Thus, in his "Separate Statement . . . To Motion for Rescission Of Informal Authorization", he stated

"(5) The Chairman endeavored to hire an investigator at \$12,000 per year. He was unable to get Board approval. He was not hired." (J.A. 11) (emphasis added). *

* The Chairman's letter to Mr. Sheridan was written in the belief that Monitor Smith, who he felt had misunderstood the informal instructions as depriving him of a voice in the hiring of staff members and thus abstained from voting for that reason, would support the hiring of Mr. Sheridan. The Chairman was mistaken in his belief and, as former Monitor Maher has stated, Mr. Sheridan was not hired.

In the case of Mr. Kalogridis, the Chairman, as well as the staff member who kept the minutes of the January 19th meeting, was initially under the impression that the Board had unanimously approved the selection and salary. Subsequently, there developed some controversy as to what the action of the Board had been in respect to Mr. Kalogridis. However, the need for his service was

(continued on following page)

Yet, the event described by former Monitor Maher took place on January 20, 1960, one day after the appellants charge that the District Court had granted the so-called "sole authority" to the Chairman to hire "such members of the staff as he may choose and at such salaries as he may choose." If appellants' allegations were correct, how could the failure of the Chairman to get Board approval possibly stop the Chairman from hiring anyone? *

B. Administration and Selection of Staff of
Board of Monitors by Chairman, Subject
to Majority Board Action re Salary, Reason-
ably Required by Exigencies of Case.

The District Court has a clear duty to supervise the operation of its officers in order to ensure that they administer their judicially invested tasks with maximum efficiency and economy. Upon consideration of the tripartite nature of the Board and of the purposes for which it is constituted, the District Court undoubtedly found that the efficient and economical discharge of the Board's duties required that the administration of its staff should be vested in one person. Exercising its supervisory prerogatives over its officers, the Court vested such administrative responsibility in the impartial Chairman, who is, as are all the Monitors, subject to the direct and continuing supervision of the Court.

(footnote continued from preceding page)

critical (one staff member having resigned) and the Chairman was prepared, if necessary, to cover the expenditure for his services personally until the misunderstanding among the board had been straightened out.

Although to date that issue has not been resolved, it is extremely significant to note that the payment of Mr. Kalogridis' salary was in fact approved as to each individual check by a majority of the Board. Member Maher dissented each time, citing the same interpretation of the instructions which has been refuted here, i.e., that the Court had given the Chairman absolute and sole authority in the matter of hiring and the payment of salaries for staff members.

* Nor was the action of Mr. Sheridan an isolated case. On January 19, 1960 by majority action of the Board, Member Maher dissenting, a clerk-typist was added to the staff of the Board. Again, this procedure would hardly have been necessary if the Chairman had really been granted the power here alleged by appellants.

Since the administration of the staff is vested in the Chairman, the Court, in its discretion, directed that the selection of the individuals with whom the Chairman, more than the other Monitors, will have the most contact, should be vested in the Chairman. Ultimate control, however, was left with the Board, qua Board, since it alone can approve the payment of salaries for the staff members.

Of course, each Monitor has the right to select his own staff analyst and secretarial help. The expenditure of their salaries, however, is also subject to majority Board action.

The eminent reasonableness and propriety of this procedure had been expressly recognized by both the Chairman and Monitor Maher. Thus the minutes of the Board of Monitors for July 22, 1959, state:

"Member Smith discussed the composition of the Staff of the Board of Monitors and stated that he was of the opinion that the Board should be consulted on any additions thereto, and that investigators rather than lawyers should now be hired. Member Maher expressed the view that the Chairman had capably administered the staff in the past and should continue to do so. The Chairman agreed with Member Maher." *

Indeed, recent developments in the Monitorship--specifically the use of the Board's staff to aid Monitor Bufalino in the preparation of charges against the Chairman, together with the threatening of a staff member by Mr. Hoffa and Monitor Bufalino with professional ruin and prosecution, all confirm the wisdom of the District Court's informed exercise of discretion in its direction vis-a-vis the Board's staff. **

* The last sentence in the quoted extract, cited by the Board of Monitors in their opposition below (J.A. 14) was never intended, as appellants allege (Br. 10) to demonstrate acquiescence to the Chairman's alleged sole and absolute power to hire, since that position has never been urged by the Board of Monitors. The excerpt from the above quoted minutes, reflecting a discussion of the composition of the staff, was cited to indicate nothing more than that Monitor Maher's statement of acquiescence to the Chairman's administration of the staff encompassed the selection of staff members.

** See Comments of the Chairman of the Board of Monitors With Reference to a Report and Request for Instruction Filed By Monitor Bufalino -- filed in Cunningham v. English, C.A. 2361-57, on May 31, 1960.

CONCLUSION

Beginning with their charge that the Monitors had been "less than candid" with the Courts (J.A. 9), followed by their derisive characterization of the Chairman as a dictator (J.A. 9) and as a "modern Joan of Arc following mysterious voices" (Motion for Stay, p. 27) and capped by distortions of the record presented in their brief, appellants have laboriously striven to set the stage for their appellate assault. But, as did Don Quixote, they tilt with orders which do not exist and parry results which could not happen. Like their legendary precursor, they have run afoul of reality.

Moreover, the judge who rendered the informal instructions here challenged, was, through the extended discharge of his duty to supervise and direct the Monitors in the performance of their duties, uniquely qualified to evaluate the propriety and necessity of the procedural directions issued to his officers.

Thus, even assuming arguendo, that such directions are the proper subjects for appellate review, appellants present no basis for this Court to hold that the District Court abused its discretion in finding the directions necessary to the discharge of its officers' duties, and in affirming or refusing to rescind them.

In the light of the foregoing, the Board of Monitors respectfully submits that the instant appeals should be dismissed, or in the alternative, that the orders sought to be reviewed be summarily affirmed.

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